

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STANLEY T. OSHINTAYO,

Petitioner,

vs.

**9:19-CV-1249
(TJM/TWD)**

G. JONES, Superintendent,

Respondent.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* petition for a *writ of habeas corpus*, brought pursuant to 28 U.S.C. § 2254, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Petitioner contends that his conviction for several offenses under New York law violated his constitutional rights. He claims that he suffered from ineffective assistance of counsel in various ways, that the trial court violated his rights by failing to appoint new counsel at Petitioner's request, and that his conviction lacked sufficient evidentiary support. Petitioner also complains that the arrest that led to his conviction violated his right to be free of cruel and unusual punishment.

Judge Dancks's Report-Recommendation, dkt. # 31, issued on March 6, 2023, recommends that the Court deny and dismiss the petition. Judge Dancks finds that

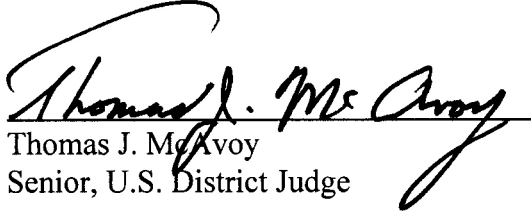
Petitioner has failed to show conduct that fell below an objective standard of professional reasonableness, much less prejudice, from any of the alleged failings of his lawyer. As to Petitioner's other claims, Judge Dancks finds no grounds for relief either. Petitioner, whose counsel was appointed, did not have a right to choose his own lawyer, and such a dispute is not a proper subject for *habeas* review in any case. A claim for excessive force, properly understood as a Fourth Amendment claim, does not implicate the validity of Plaintiff's conviction and cannot serve as a basis for *habeas* relief. As to sufficiency of the evidence, Judge Dancks finds that no decision of the state court related to the evidence was objectively unreasonable, and thus no federal *habeas* relief may lie. Finally, Judge Dancks concludes that Petitioner has not made a substantial showing of the denial of a constitutional right and recommends that the Court decline to issue a certificate of appealability.

No party has objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 31 is hereby **ACCEPTED** and **ADOPTED**. The petition for a *writ of habeas corpus*, dkt. # 1, is hereby **DENIED AND DISMISSED**. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: June 5, 2023


Thomas J. McAvoy
Senior, U.S. District Judge